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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,121	06/15/2001	Pierre N. Fay	404-193.016-1	8258

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EXAMINER

SANDERS JR, JOHN R

ART UNIT PAPER NUMBER

3737

8

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,121

Applicant(s)

FAY ET AL.

Examiner

John R. Sanders

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection. Applicant's argument on page 3 of Paper No. 7 with regard to the publication date of the *Foley* PCT reference has been considered persuasive; however, the *Foley* U.S. Priority application (09/584,061) has been granted, as U.S. Patent No. 6,535,223 with a filing date prior to Applicant's effective date and is the basis for the new grounds of rejection.
2. Applicant's arguments on page 4 of Paper No. 7 with regard to the major/minor axes of the ellipse have been considered as unpersuasive and directed to erroneous citation. First, the Applicant's citation of *Foley*'s page 50, lines 5-25 is incorrect as there is no such page and line in the *Foley* reference. Upon further investigation, the Examiner has determined that the Applicant meant to reference page 50, lines 5-25 of the *Gao* PCT Publication. Indeed, this citation of the *Gao* does include reference to the iris diameter as being the minor axis of the ellipse. However, the Examiner would like to point out that "the ellipse" in the citation refers to "the outside boundary for the **contact lens**" (page 49, line 25 - page 50, line 4) and not the **iris** itself as claimed by the Applicant in Claims 8 and 17. The citation indicates a *suggestion* for incorporating foreshortened ellipsoid measurements into eyewear selection systems.
3. The Examiner reasserts that it is common knowledge that a circle viewed at an angle will appear as an ellipse and that the major axis of the ellipse will have the same length as the diameter of the circle. Therefore, it would have been obvious to one of ordinary skill in the art to include the limitations of Claims 8 and 17.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,095,650 to *Gao et al.* in view of U.S. Patent No. 6,535,223 to *Foley*.

6. *Gao* discloses an interactive eyewear selection system (FIG. 1) including an imaging device (18) for capturing an image of a customer's face, a display screen (26) for both product selection and displaying a composite image, information receiving means (28, 30), and an image generating means (38) for superimposing the image of the customer's face with that of a trial frame (col. 6: 14-23). *Gao* discloses determining facial parameters such as pupil centers, intraocular distances and face edges (col. 8: 5-10) and using these parameters to scale the frame image to the face image (col. 10: 29-37). *Gao* discloses determining facial parameters in a location remote from the location of the eyewear via the Internet (col. 10, 19-22).

Gao does not disclose expressly using the invariant diameter of the iris as a reference for determining the size of a facial feature of the customer, nor does *Gao* disclose expressly counting the number of pixels to measure the iris and facial features.

Foley discloses the iris diameter as a reference object (abstract; col. 2: 43-45). *Foley* also discloses measuring the number of pixels across the reference object (abstract; col. 2: 60-65). *Gao* and *Foley* are analogous art because they both deal with the problem of determining size and scale factors concerning facial features and digital photographs.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the iris as a reference object and to make measurements of digital images using pixel units. The suggestion/motivation for doing so would have been due to the fact that, (a) the iris is of substantially constant diameter from person to person, and (b) pixel measurements are commonly made in digital imaging when distance in an image is unknown; using different units in a scale ratio does not alter the value of the ratio. Therefore, it would have been obvious to combine *Foley* with *Gao* to obtain the invention as specified in claims 1-17.

Conclusion

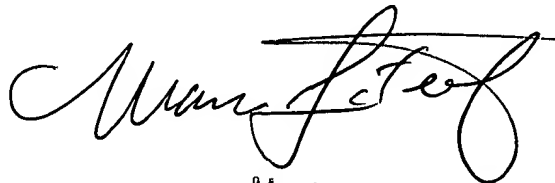
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Sanders whose telephone number is (703) 305-4974. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marvin M. Lateef can be reached on (703) 308-3256. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



jrs
June 16, 2003



Marvin M. Lateef
Supervisory Patent Examiner
Group 3700